187

(3)

Supreme Court, U.S.
FILED
MAY 2 - 2011
OFFICE OF THE CLERK

No. 10-1181

In The

SUPREME COURT OF THE UNITED STATES

LYNETTE TROUTMAN,
Petitioner,

v.

ESTATE OF ROGER TROUTMAN, et al.,
Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For Montgomery County, Ohio, Second Appellate District

PETITIONER'S REPLY MEMORANDUM

Worrell A. Reid, Esq.,
Attorney for Petitioner,
Counsel of Record,
6718 Loop Road
Centerville, OH 45459
Ph: (937) 434-2880
Email: Worrell_reid@sbcglobal.net

Petitioner's Reply

Respondents' Brief In Opposition highlights the need for a resolution of the Question Presented For Review By Petitioner. According to Respondents, Ohio law is dispositive of the issues presented. They misinterpret Section 201(d), and cite no controlling federal decision. The fact of the matter is that **Ohio law is silent** on the issue whether or not the administrator may exercise dominion and control over a deceased author's interest in federally protected copyrights.

Ohio Revised Code Section 2113.31, which has been reproduced in Appendix "B", states that **not all personalty which comes into the hands of a fiduciary is to be "...included in the inventory..."** It is the view of the Petitioner that this is the case with a decedent's interest in copyrights. Since royalties are not to be included in the inventory, they may not be used to pay creditors. A fair reading of Ohio law supports Petitioner's arguments, and

the appellate court's decision is in error.

Respondents would have this Court believe that the parties have already decided the issue presented for review by attaching various settlement agreements to their Brief In Opposition. We disagree. The Petition never personally agreed that royalties belonged to the estate, and has always believed that the contrary was true. Appendix "A" attached hereto is the answer which was filed to Petitioner's complaint that was filed in the Montgomery County Ohio Probate Court. Respondents' answer never raised the affirmative defenses of settlement, nor accord and satisfaction, and these defenses may not be raised in this appeal. See, Hulbert v. City of Chicago, 201 U.S. 275 (1906). Furthermore, even if the Petitioner did agree to the settlements, the same are void for a lack of consideration, as no part of the decedent's interest in copyrights were to be included in the inventory, and there was no "bargained for exchange". See, Brown v. Best Products, Inc., 18 Ohio St. 3d 32 (1985).

At this point the only case which is dispositive of the issues raised in the writ is the erroneous decision which has been issued by the Ohio appellate court. Thousands of litigants, practitioners and estate planners will rely on, rather be puzzled by, this blatantly erroneous decision. It is clear that Congress has always intended to protect the author and his family. This Honorable Court may have a duty to the deceased author's surviving spouse and children, and to Congress, to scrutinize the appellate court's decision, and to ascertain whether or not the same is consistent with the United States Constitution and controlling federal decisions.

Wherefore, the Petitioner requests that the writ be granted; alternatively, Petitioner requests that the said clearly erroneous appellate court decision be summarily reversed.

Respectfully Submitted,
Worrell A. Reid, Esq.,
Counsel of Record
6718 Loop Rd.
Centerville, OH 45459
(937) 434-2880
Worrell_reid@sbcglobal.net

APPENDIX A

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
PROBATE DIVISION

LYNETTE TROUTMAN, Plaintiff,	Case No. 2008MSC00081
v.	
ESTATE OF ROGER TROUTMAN, et al.,	(Judge McCollum)
Defendants and Third Party Plaintiffs,	ANSWER, COUNTERCLAIM AND THIRD PARTY COMPLAINT OF DEFENDANTS ESTATE OF LARRY TROUTMAN AND W. MICHAEL CONWAY
v.	
TIFFANIE WHITE-TROUTMAN 3923 Kings Highway Dayton, OH 45407,	
-and-	
REGINALD C. TROUTMAN 3923 Kings Highway Dayton, Ohio 45407,	
-and-	
LACE DIOR LOVE TROUTMAN c/o Vicky Jarvis	

1220 Governors Square Drive
Centerville, Ohio 45458,

-and-

TOIKA TROUTMAN-GONET
38611 Sienna Court
Palmdale, California 93550,

ASIA R. COLLINS
4001 Bellmore Trace
Trotwood, Ohio 45426,

-and-

AMBER D. CARROLL
Apt. G
3373 Shiloh Springs Road
Trotwood, Ohio 45426,

-and-

ROSALINE WILLIAMS
120 Washington Street
Hamilton, Ohio 45011

Third-Party Defendants.

W. Michael Conway, as Administrator De Bonis Non of the Estate of Lawrence Troutman, and on behalf of such Estate (hereinafter collectively, the "Answering Defendants"), hereby answers Plaintiff's Complaint as follows:

FIRST DEFENSE

1. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of Plaintiff's Complaint and therefore deny each and every such allegation.

2. Answering Defendants admit the allegations set forth in paragraph 2 of Plaintiff's Complaint.

3. Answering Defendants admit the allegations set forth in Paragraph 3 of Plaintiff's Complaint.

4. Answering Defendant's admit the allegations set forth in Paragraph 4 of Plaintiff's Complaint, to the extent that this paragraph, and Plaintiff's Complaint in its entirety is intended to refer to Larry Troutman or the estate of Larry Troutman.

5. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 5 of Plaintiff's Complaint and therefore deny each and every allegation.

6. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 6 of Plaintiff's Complaint and therefore deny each and every such allegation.

7. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 7 of Plaintiff's Complaint and therefore deny each and every such allegation.

8. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 8 of Plaintiff's Complaint and therefore deny each and every such allegation.

9. Answering Defendants admit that at the time of his death, Larry Troutman was married to Lynette Troutman. Answering Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 9 of Plaintiff's Complaint and therefore deny each and every such allegation.

Conway incorporate all allegations admitted by them to be true as set forth above.

2. The Estate of Larry Troutman has, since his death, received, and continues to receive, royalty payments arising from and based upon Larry Troutman's copyright interest in various musical works.

3. Disputes have arisen with Lynette Troutman concerning, *inter alia*, the right of Larry Troutman or his heirs to receive such royalty payments.

4. All parties interested in the resolution of the above-referenced dispute have been joined as parties hereto.

5. Answering Defendants by statute and contract are entitled to the proceeds of such royalty payments and Answering Defendants are similarly entitled to a declaratory judgment so finding, to resolve the above-referenced dispute.

WHEREFORE, Answering Defendants demand that Plaintiff's Complaint for Declaratory Judgment be dismissed

with costs to be borne by Plaintiff.

Answering Defendants are further entitled to a declaratory judgment by this Court finding that the Estate of Larry Troutman is entitled to receive those continuing royalty payments previously earned by and paid to Larry Troutman, and that such rights supersede any right of any of the other parties to this action to such prior and ongoing royalty payments.

Answering Defendants further pray for the costs of this action and any other and further relief to which they are entitled.

Respectfully submitted,

/s/Erica J. Glass for
David M. Rickert (0010483)
COOLIDGE WALL Finlay
Johnson & BEARD, LLC
260 North Detroit Street
Xenia, Ohio 45385
Phone: (937) 372-4411
Fax: (937) 372-4415
Email: rickert@coollaw.com
Attorney for Defendants Estate
Of Larry Troutman, and
Michael Conway, Administrator

App. 11

De Bonis
Non of the Estate of Larry
Troutman

APPENDIX B

Ohio Revised Code Section 2113.31 reads follows:

Every executor or administrator is chargeable with all chattels, rights, and credits of the deceased which come into his hands and are to be administered, **although not included in the inventory required by section 2115.02 of the Revised Code.** Such executor of administrator is also chargeable with all proceeds of personal property and real estate sold for the the payment of debts or legacies, and all the interest, profit, and income that in any way comes to his hands from the personal estate of the deceased (emphasis added).